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IN THE

Supreme Court of the United States

TERM, 1968

No. [redacted] 166

UNITED STATES OF AMERICA,
Respondent,

—v.—

JOSEPH RINALDI,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals in the Second Circuit rendered in the above-entitled case on May 7th, 1968.

Citations to Opinions Below

The petitioner was convicted, upon the verdict of a jury, before the Hon. Irving Ben Cooper, a Judge of the United States District Court for the Southern District of New York, of violating Section 1001, Title 18 of the United States Code. Judgment was entered on June 22nd, 1967. The opinion of the Circuit Court of Appeals, printed in Appendix A hereto. The opinion of the Circuit Court of Appeals, denying petitioner's motion for a rehearing, printed in Appendix B hereto.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on or about April 19, 1968. Rehearing was denied on May 7th, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

Questions Presented

1) Must the element of materiality be read into all the provisions of Title 18, Section 1001 of the United States Code?

2) Was it error for the trial court to admit out of court statements of a third party as admissions against the defendant?

Statement

The petitioner was indicted for violating Title 18, Section 1001, of the United States Code, in that he made, or caused to be made, certain statements to the Immigration and Naturalization Service which he knew to be false in order to procure the immigration of one Giovanni Caccavale to the United States.

The statements which were claimed to be false were said to be contained in a petition for a first preference visa and in the incorrect translation of some Italian records and documents.

The petitioner was placed on trial before Judge Irving Ben Cooper and a jury in the United States District Court for the Southern District of New York. The petitioner was found guilty of violating Title 18 U.S.C. Section 1001. He was sentenced to imprisonment for one year on six of the seven counts in the indictment, sentences to run concurrently.

The Court below affirmed the judgment of conviction of the District Court upon the authority of *United States* v. *Marchisio,* 344 F.2d 653 (2d Cir.) 1965 and *United States* v. *Silver,* 235 F.2d 375 (2d Cir.), *cert. denied,* 352 U.S. 880 (1956).

Reasons for Granting the Writ

1. The decisions of the Court below in the instant case and in *United States* v. *Marchisio,* 344 F.2d 652 (2d Cir.) 1965 and *United States* v. *Silver,* 235 F.2d 375 (2d Cir.), *cert. denied,* 352 U.S. 880 (1956) upon the authority of which the instant case was decided, are in conflict with the decisions of the Courts of Appeals for the Fourth, Fifth, Ninth, Tenth and D.C. Circuits.

These Courts of Appeals in *United States* v. *Zambito,* 315 F.2d 266 (4th Cir.), *cert. denied,* 373 U.S. 924 (1963); *Rolland* v. *United States,* 201 F.2d 678 (5th Cir.), *cert. denied,* 345 U.S. 964 (1963); *Pariten Singh Poohian* v. *United States,* 294 F.2d 74 (9th Cir. 1961); *Brandon* v. *United States,* 268 F.2d 559, (9th Cir. 1959); *Gonzales* v. *United States,* 286 F.2d 118 (10th Cir. 1960); and *Friedus* v. *United States,* 223 F.2d 598 (D.C. Cir. 1955) have held that materiality in an essential element in a prosecution for violation of Title 18 U.S.C. Section 1001.

2. Clearly, the question presented is of importance in prosecutions under Title 18 U.S.C. Section 1001. As Section 1001 is, by its terms, a general statute relating to falsifications in documents submitted to *any* department or agency of the government, the reach of this section is quite broad.

The issue, therefore, of whether "materiality" is an element of violation of Title 18 U.S.C. Section 1001 is far-reaching. It can effect prosecutions ranging, in area, from income-tax returns to Selective Service registration to immigration.

As this issue is so far-reaching, a decision from this Court is needed to clarify the area. It is manifestly improper that the issue of materiality be an essential element of a proof in one Circuit and not in another.

Settlement of the question by this Court is plainly in the public interest, since it is likely to be present in almost every prosecution under Title 18 U.S.C. Section 1001, including many now pending.

3. This Court should grant the writ its general supervisory powers in cases arising in the Federal Courts.

During the trial of this action statements made by one Thomas Lentini were elicited as admissions against the defendant. The defendant was not charged with conspiracy or aiding and abetting the violation of the United States Code.

The admission of statements made by a third party as admissions binding upon the defendant was manifestly improper and amounted to a denial of due process.

The admission of such statements in a Federal criminal prosecution was such error as to warrant this Court's exercise of its general supervisory powers.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX